

DENNIS J. HERRERA, State Bar #139669
City Attorney
KRISTEN A. JENSEN, State Bar #130196
THOMAS S. LAKRITZ, State Bar #161234
CHRISTINE VAN AKEN, State Bar #241755
Deputy City Attorneys
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Telephone: (415) 554-4615
Facsimile: (415) 554-4757
E-Mail: kristen.jensen@sfgov.org

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO
(Including SAN FRANCISCO DEPARTMENT OF BUILDING
INSPECTION, SAN FRANCISCO BUILDING
INSPECTION COMMISSION, and
SAN FRANCISCO PLANNING DEPARTMENT)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

REGAN CARROLL TRUST, Regan
Carroll, Trustee,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, SAN FRANCISCO
DEPARTMENT OF BUILDING
INSPECTION, SAN FRANCISCO
BUILDING INSPECTION
COMMISSION, and SAN FRANCISCO
PLANNING DEPARTMENT,

Defendants.

Case No. C-07-2577 SBA

**CITY'S NOTICE OF MOTION TO
DISMISS FOR LACK OF
JURISDICTION AND FAILURE TO
STATE A CLAIM AND, IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT
[FRCP 12(B)(1); 12(B)(6); 56]**

Hearing Date: December 11, 2007
Time: 1:00 p.m.
Place: Courtroom 3, 3rd Floor

Trial Date: TBA

TO PLAINTIFF AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on December 11, 2007 at 1:00 p.m., or as soon thereafter as the
matter may be heard in the above-entitled court, located at 1301 Clay Street, Courtroom 3, 3rd Floor,
CITY'S NOTICE OF MOTION TO DISMISS
CASE NO. C-07-2577 SBA

1 Oakland, California, Defendant City and County of San Francisco (sued herein as the City and
2 County of San Francisco, San Francisco Department of Building Inspection, San Francisco Building
3 Inspection Commission, and San Francisco Planning Department; collectively "City") will move the
4 court to dismiss the action pursuant to FRCP 12(b)(1), 12 (b)(6) or, in the alternative, for summary
5 judgment pursuant to FRCP 56. This motion will be made on the grounds that Plaintiff's complaint
6 fails to state a claim for which relief can be granted, and some or all of the claims set forth in the
7 complaint are not ripe for review.

8
9 Specifically, the complaint fails to state a claim for relief pursuant to 42 U.S.C. §1983 in that
10 Plaintiff has failed to allege facts establishing (1) acts by the defendants (2) under color of state law
11 (3) depriv[ed][it] of federal rights, privileges or immunities [and] (4) caus[ed][it] damage. Moreover,
12 the court must apply the highly deferential "rational basis" standard of review to Plaintiff's claims.
13 Because the proposed project did not comply with existing local law at the time Plaintiff sought its
14 issuance, the City's refusal to issue the requested permit was rationally based.

15
16 Plaintiff's claims are also barred on the basis of *res judicata* and collateral estoppel, because
17 Plaintiff failed to seek state judicial relief from the administrative decisions it now challenges, and
18 those determinations must now be accorded preclusive effect. In addition, Plaintiff's §1983 claims
19 are barred by the statute of limitations, since those claims are premised on alleged actions by the City
20 that Plaintiff claims occurred prior to June, 2001.

21
22 Alternatively, the complaint sets forth claims which are not ripe for review, since the
23 Complaint does not allege that the City has taken final action with respect to Plaintiff's building
24 permit application. In fact, at Plaintiff's request, the City's Board of Appeals continued the hearing of
25 Plaintiff's claims relating to the City's denial of a building permit for one year, and has taken no
26 further action thereon.

1 Dated: October 9, 2007

2 DENNIS J. HERRERA
3 City Attorney
4 KRISTEN A. JENSEN
5 THOMAS S. LAKRITZ
6 CHRISTINE VAN AKEN
7 Deputy City Attorneys

8 By: 

9 KRISTEN A. JENSEN

10 Attorneys for Defendant
11 CITY AND COUNTY OF SAN FRANCISCO
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28